

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #13	CCRB Case #: 201907088	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/09/2019 11:22 AM	Location of Incident: § 87(2)(b)	Precinct: 123	18 Mo. SOL 2/9/2021	EO SOL 9/26/2021	
Date/Time CV Reported Fri, 08/09/2019 3:22 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/09/2019 3:22 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Marco Gomezcoello	12082	965142	123 PCT
2. POF Hope Newcomb	17383	944847	123 PCT
3. Officers			123 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Angela Tanzillostrong	01565	962829	123 PCT
2. POM Tomasz Roginski	03512	955405	123 PCT
3. POM Matthew Koeth	05230	932861	123 PCT
4. POM Francis Li	16450	944737	123 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Hope Newcomb	Abuse: Police Officer Hope Newcomb entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
B.POM Marco Gomezcoello	Abuse: Police Officer Marco Gomezcoello entered § 87(2)(b) in Staten Island.	§ 87(2)(b)
C.POF Hope Newcomb	Force: Police Officer Hope Newcomb used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Marco Gomezcoello	Force: Police Officer Marco Gomezcoello used physical force against § 87(2)(b)	§ 87(2)(b)
E.POF Hope Newcomb	Force: Police Officer Hope Newcomb restricted § 87(2)(b)'s breathing.	§ 87(2)(b)
F.POF Hope Newcomb	Abuse: Police Officer Hope Newcomb threatened to arrest § 87(2)(b)	§ 87(2)(b)
G. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

### Case Summary

On August 9, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of herself, her 17-year-old daughter, § 87(2)(b) and her husband, § 87(2)(b)'s father, § 87(2)(b).

At approximately 11:22 a.m. on August 9, 2019, Police Officer Hope Newcomb and Police Officer Marco Gomezcoello, both of the 123<sup>rd</sup> Precinct, arrived at § 87(2)(b) in Staten Island in response to a report of an assault in progress. § 87(2)(b) opened the door and spoke to the officers briefly before § 87(2)(b) started yelling and cursing at the officers from inside the house. PO Newcomb and PO Gomezcoello entered the house (**Allegations A-B – Abuse of Authority – Entry of Premises; § 87(2)(g)**). The officers used physical force against § 87(2)(b) and restricted her breathing (**Allegations C-D – Force – Physical Force; § 87(2)(g)**; **Allegations E – Force – Restricted Breathing; § 87(2)(g)**). PO Newcomb threatened to arrest § 87(2)(b) (**Allegation F – Abuse of Authority – Threat of Arrest; § 87(2)(g)**). In addition to EMS, PO Angela Tanzillostrong, PO Tomasz Roginski, PO Francis Li, and PO Matthew Koeth, all of the 123<sup>rd</sup> Precinct, arrived to provide backup. Officers forcibly removed § 87(2)(b) to the hospital (**Allegations G – Abuse of Authority – Forcible Removal to Hospital; § 87(2)(g)**).

BWC footage from PO Newcomb, PO Gomezcoello, PO Tanzillostrong, PO Roginski, PO Li, and PO Koeth is attached to IAs #56-62 (Board Review 01-07) and summarized in IA #78 (Board Review 08).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Hope Newcomb entered § 87(2)(b) in Staten Island.**

**Allegation (B) Abuse of Authority: Police Officer Marco Gomezcoello entered § 87(2)(b) in Staten Island.**

At the 00:50 minute mark of the media player timestamp of PO Newcomb's BWC footage, visible at the bottom of the screen, as PO Newcomb approaches the house of the 911 caller, § 87(2)(b), § 87(2)(b) exits the front door and says, "It's not here. It's next door." PO Newcomb asks, "Did you see something?" § 87(2)(b) replies, "No, but we hear." PO Newcomb says, "You hear fighting?" § 87(2)(b) says, "No. She has a mental disorder and she beats up- she hits her parents." At 01:15, PO Gomezcoello knocks on § 87(2)(b)'s door and says, "Police." Approximately 10 seconds later, § 87(2)(b) opens the door partially while telling § 87(2)(b) who is still inside of the house and dressed in a bathrobe, "Stop it, stop it. Go upstairs. Relax." PO Gomezcoello asks what is going on and § 87(2)(b) calls out, "Mind your business." § 87(2)(b) exits the house, stands in front of the door, and closes it behind her completely. She tells the officers that § 87(2)(b) has a neurological problem for which she has been unable to get the proper care. PO Newcomb turns away to radio for an ambulance for an "EDP." At the 01:30 minute mark of the media player timestamp of PO Gomezcoello's BWC footage, PO Gomezcoello asks § 87(2)(b) if she is ok. § 87(2)(b) says she is okay and places her hand to her face.

At 01:48 in PO Newcomb's BWC footage, once PO Newcomb has turned to face the door again, § 87(2)(b) opens the door completely and yells, "This is why we let Dad handle this, because you don't know how to handle..." PO Newcomb interrupts her by saying, "Knock it off," walks past § 87(2)(b) and starts approaching the front door while § 87(2)(b) is still inside. § 87(2)(b) is holding her robe closed with her left hand, points at § 87(2)(b) with her right hand while talking, and she waves her right hand as PO Newcomb approaches her. § 87(2)(b) is not holding anything in her hands and her robe does not appear to have pockets. At 01:53, when PO Newcomb has almost reached the front door, § 87(2)(b) says, "Get the fuck away from me." At 01:54, PO Newcomb's left hand can be seen on § 87(2)(b)'s right shoulder. PO Newcomb enters the house, followed by PO Gomezcoello, while § 87(2)(b) yells, "Get off me!" The officers attempt to handcuff § 87(2)(b) immediately upon entering the house. At no point prior to the entry does

§ 87(2)(b) approach the officers or cross the threshold of the doorway (Board Review 01).

§ 87(2)(b) 911 call reveals that she reported that § 87(2)(b) was beating her parents up outside, and hitting them with her hands. No weapons were reportedly involved (Board Review 15). The radio communications audio reveals that the job went over the radio as an assault in progress involving a § 87(2)(b)-old who assaulted her parents (Board Review 16). EVENT documents reveal that at 11:22a.m., PO Newcomb called an ambulance for an EDP (Board Review 17).

§ 87(2)(b)'s testimony was generally consistent with the BWC footage. She stated that PO Gomezcoello approached the screen door and she told him, "Get the fuck away from me" but did not make or attempt to make physical contact with him. PO Newcomb opened the screen door and began to push the front door open while § 87(2)(b) tried to push it closed. PO Newcomb entered the house, followed by § 87(2)(b) and PO Gomezcoello (Board Review 09).

§ 87(2)(b)'s statement was generally consistent with the BWC footage. She said she was arguing with § 87(2)(b) when she heard a siren. § 87(2)(b) had been screaming, banging on the walls, and throwing things out the back door toward her father. § 87(2)(b) walked downstairs with § 87(2)(b) who had already started to calm down. She assured the officers that everything was under control, but they started approaching the front door. § 87(2)(b) said, "Please go away. We don't need you." PO Newcomb put her hand on the door to open it and § 87(2)(b) said, "Get the fuck away from my house." PO Newcomb went around § 87(2)(b) into the house, and "rushed § 87(2)(b) down" as PO Gomezcoello followed her inside (Board Review 10).

PO Newcomb's statement was generally consistent with the BWC footage. She stated that § 87(2)(b) started screaming, cursing, and "coming at" the officers while they stood outside the door, described as pointing at them with her hand. PO Newcomb told § 87(2)(b) to calm down, but she continued yelling and stepped outside past the door towards the officers. (Later in her CCRB interview, PO Newcomb said she did not recall anyone stepping past the threshold of the front door before she and PO Gomezcoello entered the home.) PO Newcomb did not recall making any attempts to deescalate before entering the home and handcuffing § 87(2)(b) to "get control of her." PO Newcomb said officers may enter a home without a warrant when someone poses a danger to themselves or is going to hurt someone else. When asked who was in danger during this incident, PO Newcomb said, "Possibly the mother, because I wasn't able to get a clear understanding of what was happening."

PO Gomezcoello § 87(2)(g) stated that § 87(2)(b) came to the door and said, "What the fuck are you doing here? Get the fuck out of my house." PO Newcomb said, "We're here to help you. Are you okay?" PO Newcomb stepped into the house and § 87(2)(b) started walking towards PO Gomezcoello, who entered the house to try and "apprehend" § 87(2)(b) to calm her down.

According to the emergency doctrine established in People v Rodriguez, 77 A.D.3d 280 (2010), entry into a home is permissible without a warrant if law enforcement officers reasonably believe that emergency assistance is needed (Board Review 11). A warrantless entry based on the emergency doctrine must be based upon objective, empirical facts, such as a reported assault in progress and confirmatory statements from a civilian witness, and not upon the subjective belief of the police. People v Greenleaf, 222 A.D.2d 838 (1995) (Board Review 26).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Officers forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that § 87(2)(b) was removed to § 87(2)(b). She said she did not want to go to the hospital and felt she was forced to go.

As described above, officers responded to a reported assault in progress. Upon arriving, the 911 caller, § 87(2)(b) told the officers that she did not see what happened and did not hear any fighting, but that § 87(2)(b) has a mental disorder and hits her parents.

At the 13:20 minute mark of the medial player timestamp in PO Newcomb's BWC footage, visible at the bottom of the screen, two EMTs arrive and PO Koeth, one of the officers who arrived as backup, tells them, "We got a call for a § 87(2)(b)-old beating up her parents. That's not the case." He tells the EMTs that § 87(2)(b) has "outbursts" that involve her stomping her feet on the ground and yelling. § 87(2)(b) tells the EMTs about various health ailments suffered by § 87(2)(b) including that she has "anxiety which triggers her rage." One of the EMTs says to § 87(2)(b) "So what do you want today? You want her to be psych eval'd [sic]?" § 87(2)(b) replies, "I don't want her to be anything eval'd [sic]. It's not psych. It's not a psychiatric issue." At 18:05, one of the EMTs asks PO Newcomb, "How was she presenting when you came in?" PO Newcomb responds, "She was very aggressive when we got here." The EMT turns to § 87(2)(b) and says, "Let's take you to the hospital to get evaluated."

§ 87(2)(b) stated that when the officers arrived, § 87(2)(b) had already started to calm down. She believed that PO Newcomb's actions only served to antagonize § 87(2)(b) and exacerbate the situation. When the backup officers arrived, she told them that going to the hospital would not prevent § 87(2)(b) from having another episode. § 87(2)(b) said once she and § 87(2)(b) were transported to the hospital, the doctors did not understand why they were there, and § 87(2)(b) was released that same day.

PO Newcomb stated that to the best of her knowledge, the fight between § 87(2)(b) and her parents that precipitated the 911 call was purely verbal and never became physical. PO Newcomb stated that "it was EMS's call" to take § 87(2)(b) to the hospital but she did not know what EMS's reason was for deciding to bring § 87(2)(b) to the hospital. No force was used, and § 87(2)(b) was not removed against her will.

PO Gomezcoello stated that § 87(2)(b) was "not physically acting correctly" and that he and PO Newcomb were worried she might harm herself. PO Gomezcoello prepared § 87(2)(b)'s AIDED Report, which notes that she was removed to the hospital for "mental evaluation." The report notes that she did not physically harm herself or others, did not physically or verbally threaten others, and did not speak of harming herself or others (Board Review 17).

According to NYPD Patrol Guide Procedure 221-13, officers may remove an emotionally disturbed person to the hospital if the person is conducting himself in a manner which an officer reasonably believes is likely to result in serious injury to himself or others (Board Review 18).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Force: Police Officer Hope Newcomb used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Marco Gomezcoello used physical force against § 87(2)(b)**

**Allegation (E) Force: Police Officer Hope Newcomb restricted § 87(2)(b) s breathing.**

At the 01:35 minute mark of PO Gomezcoello's BWC footage, PO Newcomb enters the house. § 87(2)(b) yells, "Get the fuck away from me. Get the fuck off me." PO Newcomb's left arm is seen wrapped around § 87(2)(b) s body. At 01:43, PO Gomezcoello tells § 87(2)(b) "Put your hands behind your back." § 87(2)(b) says, "No," and pushes off of PO Newcomb. At the 02:00 minute mark of the media player timestamp in PO Newcomb's BWC footage, visible at the bottom of the screen, PO Gomezcoello grabs § 87(2)(b) s arms with both hands from behind and pushing her over the side of a couch while she screams for him to get off her. PO Newcomb's hands are not visible until 02:23, when she tries to grab § 87(2)(b) s left arm. At 02:23, PO Gomezcoello's presses his forearm against the upper portion of § 87(2)(b) s back while she is bent forward over the arm of the couch. At 02:38, PO Newcomb grabs § 87(2)(b) s right arm and twists it behind her back. Starting at 02:45, § 87(2)(b) yells for 15 seconds straight that she is going to have a stroke, and both her parents yell at the officers to stop before she has a stroke. At 03:10, § 87(2)(b) falls onto the couch seats and is pushed by PO Newcomb onto § 87(2)(b) s lap on an adjacent couch. § 87(2)(b) s legs are not visible in most of the footage, but in the footage where her legs are visible, she is not kicking her legs. The BWC footage does not show whether PO Newcomb ever pushed § 87(2)(b) s face into a pillow.

§ 87(2)(b) stated that when PO Newcomb entered the house, she grabbed § 87(2)(b) with two hands, pushed her down over the arm of the couch, and pushed her face into a pillow of the couch so that she could not breathe. § 87(2)(b) s feet remained on the floor while she was held in this position. § 87(2)(b) tried to get away from PO Newcomb, but she did not hit PO Newcomb or do anything else to resist. PO Newcomb continued trying to pull § 87(2)(b) s arms behind her back. PO Gomezcoello told PO Newcomb to stop, but PO Newcomb kept trying to restrain § 87(2)(b). About six additional officers arrived and entered the house, and just as they walked in the front door, PO Newcomb stopped trying to handcuff § 87(2)(b). § 87(2)(b) s testimony was generally consistent with § 87(2)(b) s.

PO Newcomb stated that she grabbed § 87(2)(b) s right wrist with her right hand and entered the house, with PO Gomezcoello following immediately behind her. PO Newcomb pulled § 87(2)(b) s hands behind her back and leaned her forward so that she was pressed face-down against the couch. § 87(2)(b) tried to kick PO Newcomb while PO Newcomb tried to handcuff her. PO Gomezcoello might have attempted to assist by grabbing one of § 87(2)(b) s arms (PO Newcomb could not recall for sure), but she signaled to him with her hand that she did not need his help. PO Newcomb did not restrict § 87(2)(b) s breathing. § 87(2)(b) yelled, "She's going to have a stroke!" PO Newcomb asked what § 87(2)(b) was talking about. PO Newcomb was able to get one handcuff on one § 87(2)(b) s wrists, but § 87(2)(b) wiggled her hand out. § 87(2)(b) said, "I can calm her down," so PO Newcomb let go of § 87(2)(b) and told § 87(2)(b) to calm her down.

PO Gomezcoello § 87(2)(g) stated that § 87(2)(b) was being “aggressive,” so both officers grabbed her arms, pushed her face forward onto the couch, and PO Newcomb tried to handcuff her. § 87(2)(b) kicked her legs behind her and screamed. Some of her kicks made contact with PO Gomezcoello’s legs, but not with PO Newcomb. PO Gomezcoello did not think § 87(2)(b) breathing was restricted at any point. The officers had gotten one handcuff on § 87(2)(b) when § 87(2)(b) asked to be allowed to handle § 87(2)(b) and said she could calm her down. Either PO Gomezcoello or PO Newcomb unlocked the right handcuff and let § 87(2)(b) sit down with § 87(2)(b).

“Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody...When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force” NYPD Patrol Guide, Procedure 221-01 (Board Review 12).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Hope Newcomb threatened to arrest § 87(2)(b).**

At the 00:20 minute mark of the media player timestamp in PO Gomezcoello’s BWC footage, visible at the bottom of the screen, § 87(2)(b) walks next to PO Gomezcoello from his left as PO Gomezcoello is restraining § 87(2)(b). § 87(2)(b) starts yelling, “Let me help you with that.” § 87(2)(b) reaches his right hand toward PO Gomezcoello and places it on § 87(2)(b)’s back. At 00:25, § 87(2)(b) screams that the officers are going to hurt § 87(2)(b) and reaches toward § 87(2)(b) a second time. PO Newcomb orders § 87(2)(b) multiple times to, “Go away. Go.” At 00:47, § 87(2)(b) disappears from the video before reappearing next to PO Gomezcoello again at 01:05. § 87(2)(b) tells the officers to stop and that he is going to sue them. At 01:20, § 87(2)(b) falls backward onto a couch, and PO Newcomb tells her to coverup and calm down. § 87(2)(b) walks in between PO Newcomb and § 87(2)(b) and attempts to hand her a blanket, which she refuses to take. At 02:00, § 87(2)(b) tells PO Gomezcoello that PO Newcomb previously arrested him. PO Newcomb turns around and tells § 87(2)(b) “Step back from me, how about that? Step back from me or you’ll go to jail again.”

§ 87(2)(b) stated that he was in his backyard when he heard a noise from inside the house. He walked inside and saw PO Newcomb and PO Gomezcoello jumping on § 87(2)(b) and twisting her arms behind her back. He asked the officers what was going on, but they did not answer him. § 87(2)(b) said, “Please let her go,” but they continued to ignore him. He repeated his request for the officers to let his daughter go. At some point, when PO Newcomb was trying to handcuff § 87(2)(b) § 87(2)(b) pushed upward on § 87(2)(b)’s hand to get PO Newcomb to stop, but he did not touch PO Newcomb’s hand. He said, “Just give her a minute and she’ll be okay.” PO Newcomb said, “Stop or I’m going to arrest you” (Board Review 14).

PO Newcomb § 87(2)(g) said as she and PO Gomezcoello were trying to handcuff § 87(2)(b) § 87(2)(b) reached his hand toward where PO Newcomb was holding § 87(2)(b) s wrist. PO Newcomb could not recall if he made physical contact. He said something about having previously been arrested, and PO Newcomb told him to back up or he would be arrested again. PO Newcomb did not specify what § 87(2)(b) could have been arrested for.

According to New York State Penal Law 195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function (Board Review 14).

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#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Review 19-21).
- PO Newcomb has been a member of service for 12 years and PO Gomezcoello has been a member of service for two years, and this is the first CCRB complaint in which either has been named a subject.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- As of March 31, 2020, no Notice of Claim has been filed with the New York City Comptroller's Office regarding this incident (Board Review 25).
- According to the Office of Court Administration (OCA), neither § 87(2)(b) nor § 87(2)(b) has a history of convictions in New York City (Board Review 22-24).

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Squad 13

Investigator:	<u>Robert Bryan</u> Signature	<u>Robert Bryan</u> Print Title & Name	<u>4/22/2020</u> Date
Squad Leader:	<u>IM Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>04/23/2020</u> Date